In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.1561 of 2002.

Date of decision:11.9.2006.

Jaswant Singh.

...Appellant.

Versus

Municipal Committee, Raikot and another.

...Respondent.

...

Coram: Hon'ble Mr. Justice S.N.Aggarwal.

...

Present: Mr. Rajesh Punj Advocate for the appellant.

Mr. Sanjeev Sharma Advocate for the respondents.

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Judgment.

S.N.Aggarwal, J.

The appellant filed civil suit claiming that he was in possession of the property measuring 3 Kanals 4 Marlas comprised in Khata No.451/502, Khasra Nos. 1041, 1042, 1043, 1044 and 1045 as entered in the Jamabandi for the year 1992-93. It is owned by Shamlat Patti Kutba Darwaja Hasab Rasad Raqba and the appellant being the proprietor was in possession as a co-sharer. It was further pleaded that mutation No.541 of this land was got sanctioned by respondent No.1 in its favour but the defendant/ Municipal Committee was neither the

owner nor in possession of the suit property. Hence, relief of injunction was prayed against the respondents.

On the other hand, the version of the respondents was that earlier the suit property was recorded in the ownership of Shamlat Patti Kutba Darwaja Hasab Rasad Raqba in the Jamabandi for the year 1977-79. The plaintiff/appellant got recorded his name in the column of ownership in the Jamabandi for the year1982-83 in connivance with the revenue officials but since the area of the suit property was included in the respondent-Municipal Committee, therefore, under the provisions of Punjab Municipal Act, 1911, the respondent-Committee had become owner of the suit property. It was in consonance with the notification dated 28.7.1987 issued by the Government of Punjab. Therefore, mutation No.541 was sanctioned on 12.5.1987 by the Assistant Collector 2nd Grade, Raikot in favour of the defendant/Committee. The said Committee has been shown to be the owner in possession in all the Jamabandies for the years 1987-88 and 1992-93. The plaintiff-appellant had challenged the mutation before Assistant Collector Ist Grade, Raikot who remitted the case back to Assistant Collector 2nd Grade, Raikot. Thereafter again the Assistant Collector 2nd Grade, Raikot had sanctioned the mutation in favour of respondent- Municipal Committee. The appellant and others had preferred appeal bearing No.121 on 2.9.1987 which was dismissed by the Court of Collector, Ludhiana on 31.8.1988. The possession of the appellant was also denied.

It was further pleaded that the site in dispute was lying vacant. In November,1995, the plaintiff-appellant had raised a boundary wall illegally upon the said property and encroached thereupon. Accordingly, notice dated 27.11.1995 was issued under Sections 172-A (1) and 172-A (2) of the Punjab Municipal Act which was replied by the plaintiff-appellant. He filed a civil suit and got interim stay. The plaintiff-appellant had also constructed a room and installed a hand pump in the suit property. Therefore, restoration of possession to the respondent-Committee was prayed.

Issues were framed.

The parties led the evidence.

The learned trial Court reached the conclusion that the plaintiff-appellant was not entitled to any injunction. The suit was accordingly dismissed by the learned trial Court vide judgment and decree dated 9.4.1999.

The plaintiff-appellant had filed an appeal. The learned Lower Appellate Court up-held the findings of fact recorded by the learned trial Court and dismissed the appeal vide judgment and decree dated 10.9.2001.

Hence, the present appeal.

The submission of learned counsel for the appellant was that admittedly the appellant was in possession of the suit property. Therefore, he could be dispossessed only in accordance with law and not otherwise.

On the other hand, the submission of learned counsel for the respondents was that the appellant encroached upon the suit land without any valid title and immediately thereafter secured stay order from the Court to protect his illegal possession. Hence, it was prayed that the appeal be dismissed.

In support of his arguments, the learned counsel for the respondents has placed reliance on **Sopan Sukhdeo Sable and others Versus Assistant Charity Commissioner and others,** (2004)4 Supreme Court Cases 137, **Mahadeo Savlaram Shelke and others Versus Pune Municipal Corporation and another,** (1995) 3 Supreme Court Cases 33 and **Premji Ratansey Shah and others Versus Union of India and others,** (1994) 5 Supreme Court Cases 547.

Admittedly, the appellant does not claim to be the owner of the suit property. He claimed in its possession as Shamlat Patti Kutba Darwaja, Hasab Rasad Raqba. Admittedly, the suit land was owned by the governing body of the village. The said village has merged in the respondent-Municipal Committee and,therefore, the respondent-Municipal Committee has become its owner. The appellant claims to be in possession of the suit property. Reliance was placed on the Jamabandi for the year 1982-83. However, it is a stray entry in the revenue record. There is no entry about the possession of the plaintiff-appellant on the suit property either prior to the Jamabandi for the year 1982-83 or after the Jamabandi for the year 1982-83. Therefore, the

plaintiff-appellant cannot be held to be in possession of the suit property prior to 1995. It is further proved on the file by the respondent-Municipal Committee that the plaintiff-appellant got its possession in the year 1995 and he raised boundary wall and constructed a room and installed a hand pump. After the notice was served on the plaintiff-appellant by the respondent-Municipal Committee for illegal encroachment made on the suit property owned by the respondent-Municipal Committee, the plaintiff-appellant immediately rushed to the Civil Court and secured stay order against his dis-possession. Therefore, the possession of the plaintiff-appellant was not settled possession. It was in fluctuating position and his possession came to be materialized only by the orders passed by the Courts. The Court process cannot be used to legalise any illegality as it frustrates the ends of justice.

The learned counsel for the appellant has placed reliance on **Rame Gowda (D) by Lrs. Versus Mr.Varadappa Naidu (D) by Lrs. And another,** 2004(1) RCR (Civil) 519 in which the Hon'ble Supreme Court has held that even a trespasser can be granted stay order. The principle of law laid down in the judgment reported as **Rame Gowda** (supra) is not applicable to the facts of the present case because the plaintiff-appellant had allegedly come in possession only in November,1995 and immediately thereafter he rushed to the Civil Court and got the stay order which amounted to mis-use of process of law by him. The plaintiff-appellant cannot be termed to be in settled

possession when he allegedly encroached upon the land only a few days before the filing of civil suit. The suit land is owned by the respondent-Municipal Committee.

Moreover, the mutation of ownership bearing No.541 was sanctioned in favour of the respondent- Municipal Committee on 12.5.1987. The appeal filed by the plaintiff-appellant against the said judgment was dismissed on 31.8.1988. No step was taken by the plaintiff/appellant thereafter. Accordingly, the said order dated 31.8.1988 had become final by which the mutation entered in favour of respondent-Municipal Committee was up-held. Therefore, the plaintiff-appellant is estopped by his own conduct from challenging the ownership of the respondent-Municipal Committee.

Still further when the mutation of ownership was sanctioned in favour of respondent-Municipal Committee in the year 1987 and had final in the year 1988, it was incumbent upon the plaintiff-appellant to file a suit for a declaration of his title if he claimed to be the owner. No such suit for declaration of title has been filed by the plaintiff-appellant. Therefore, he cannot file a suit for permanent injunction alone seeking protection of his possession when he was unable to claim or prove his title.

For all the reasons discussed above, this Court does not find any valid ground for disturbing the findings of fact recorded by the Courts below.

No substantial question of law arises.

There is no merit in the present appeal and the same is dismissed.

September 11,2006. (S. N. Aggarwal)
Jaggi Judge